Before Mr. Justice Mitter and Mr. Justice Norris.

1886 *March* 12.

RABBABA KHANUM (PETITIONER) *v.* NOORJEHAN BEGUM, *alias* DALIM SHAHIBA AND OTHERS (OPPOSITE PARTIES).*

Parties—Interpleader suit, Application to be made a party to—Civil Procedure Code, ss. 32, 622—*Power of High Court on Revision—Power to add parties.*

A merely erroneous construction of the provisions of an Act is not a ground for relief under s 622 of the Civil Procedure Code.

M J instituted an interpleader suit against two rival claimants, *N* and *A*, in respect of a sum of Rs. 20,000. *R* subsequently claimed a portion of the money and applied to be made a party to the suit; but was opposed by *M J* and *N*. The Subordinate Judge refused the application on the ground that, though it was probably made under s. 32 of the Civil Procedure Code, *R*'s right or claim not having been admitted by the plaintiff nor asserted to his knowledge, she was not a necessary party under the special provisions of Chapter XXXIII of the Civil Procedure Code, and referred her to a regular suit.

Held, that the order, though based upon an erroneous construction of the provisions of s. 32 of the Code, did not come within the scope of s. 622, inasmuch as it could not be said that the Subordinate Judge had failed to exercise a jurisdiction vested in him by law.

Held, also, that a Court may, in the exercise of its discretion under s. 32 of the Code, add a party to a suit upon his own application.

MIRZA JURAT, on the allegation that he held a sum of Rs. 20,000 for the benefit of the widows of his father, Mirza Himmat, instituted an interpleader suit in the Court of the Subordinate Judge of Gya, in which he represented Noorjehan Begum and Mussamut Azmatunnissa as the rival claimants. Rabbaba Khanum then came in, and, alleging herself to be one of the widows of Mirza Himmat, made an application to the Court that she might be added as a party to the suit. Mirza Jurat, as well as Noorjehan Begum, having opposed the application, the Sub-Judge disallowed it, and referred the petitioner to a regular suit. Against that order Rabbaba Khanum presented a petition to the High Court (GARTH, C.J., and BEVERLEY, J.) and obtained a rule calling upon the plaintiff and Noorjehan Begum to show cause why the prayer of the petitioner to be made a party to the suit should not be granted.

* Civil Rule No. 1451 of 1885, against the order of Baboo Kali Prasanna Mukherji, Subordinate Judge of Gya, dated the 18th of November 1885.

1886

RABBABA KHANUM v. NOORJEHAN BEGUM.

On the rule coming up for argument,—

The Advocate-General (Mr. *Paul*) and Baboo *Saligram Singh*, for the petitioner.

Mr. *Abul Hossain* and Baboo *Surendra Nath Roy*, for the plaintiff, opposite party.

Mr. *O'Kinealy* and Munshi *Mahomed Yusoof* for the defendant, opposite party.

The Court (MITTER and NORRIS, JJ.) delivered the following judgment:—

This rule was argued before us on Tuesday last; Mr. O'Kinealy showing cause against it, and the Advocate-General supporting it.

The facts of the case, as stated in the affidavit of the petitioner, are as follows:—

One Mirza Himmat, who was possessed of considerable property in British India, was killed in Turkish Arabia on 26th August 1884; he left four widows, *viz.*, Mussamut Rabbaba, Mussamut Jhabhan, Mussamut Goharunnisa and Mussamut Azmatunnissa, together with a child or children by each. It was alleged by Mr. O'Kinealy that Mirza Himmat left a fifth widow, by whom he had four children; the Advocate-General alleged that the lady, Noorjehan Begum, had been divorced by Mirza Himmat in his lifetime. On 3rd September 1884 the children of Noorjehan Begum applied to the District Judge of Gyā for a certificate under Act XXVII of 1860, in which they admitted that their mother had been divorced from their father. On 16th September 1884 Mirza Jurat, one of Mirza Himmat's sons by Mussamut Goharunnissa, also applied for a certificate, and he alleged that his father had divorced Noorjehan Begum. On 6th November 1884, Mussamut Rabbaba, who is a Persian lady, residing in Persia, preferred a petition to the Persian Consul at Baghdad, praying that her interests as widow and heiress of Mirza Himmat might be protected. This petition was forwarded to the Government of India, and found its way to the Judge of Gya on 15th January 1885. On 27th March 1885, Mussamut Rabbaba sent a petition to the Judge of Gya, and on 4th June

1886

RABBABA KHANUM v. NOORJEHAN BEGUM.

1885 sent him a telegram, to which telegram the Judge replied, advising her to send a vakalutnama to a pleader; she sent the vakalutnama, but before it reached Gya, the Judge had, on 26th May 1885, disposed of the applications for a certificate and had granted it to Mirza Jurat. The Judge appears to have recognised the rights of Mussamut Rabbaba as an heiress to her husband, for he directed Mirza Jurat to hold Government Promissory Notes for Rs. 20,000 on her account.

On 25th July 1885 Mirza Jurat put in a petition before the Judge in which he withdrew his former statement that Noorjehan Begum had been divorced by his father; and in breach of the Judge's order paid over to her Rs. 10,000 out of the Rs. 20,000 he had been directed to hold for Mussamut Rabbaba. Upon this Mussamut Azmatunnissa put in a petition alleging that Mirza Jurat, in making the payment of Rs. 10,000 to Noorjehan Begum, was acting fraudulently and in breach of the security bond he had given, whereupon the Judge ordered him to take back the Rs. 10,000 from Noorjehan Begum, which he did. On 11th September 1885 Mirza Jurat (in collusion, it was alleged by the Advocate-General, with Noorjehan Begum) instituted an interpleader suit against Noorjehan Begum and Mussamut Azmatunnissa in respect of the Rs. 20,000 in the Court of the Subordinate Judge of Gya.

On 8th October 1885, Mussamut Rabbaba put in a petition praying to be made a party to the interpleader suit. On 17th November 1885 Mussamut Azmatunnissa put in a petition admitting Mussamut Rabbaba as widow and heiress of Mirza Himmat, and offering no objection to her being made a defendant in the interpleader suit. Mirza Jurat and Noorjehan Begum opposed the application, and on 19th November 1885 the Subordinate Judge dismissed the application. His judgment was as follows: "This is an application on behalf of one Mussamut Rabbaba to be made a party to an interpleader suit pending in this Court. The application is probably made as one under s. 32 of the Civil Procedure Code; but the suit is one of peculiar character; such suits are not common, and the special provisions made for them are those contained in Chapter XXXIII of the Civil Procedure Code. Such a suit is instituted when

two or more rival claimants assert claims in respect of the same thing against a stakeholder, who in such circumstances institutes the suit to have the right of the different claimants determined. Here the applicant's right or claim is not admitted by the plaintiff, and so I do not think her to be a necessary party to this suit. If she has any right she can assert it in a regular suit. I do not think it right to make this suit complicated by introducing in it parties whose rights are in dispute and who asserted no claim to the plaintiff. I refuse to admit this petition and it is accordingly rejected." This is no doubt an unfortunate judgment, and it is difficult to understand what the Subordinate Judge really means. The Advocate-General urged that the Subordinate Judge meant to say that the provisions of s. 32 had no application to interpleader suits, and were not capable of application to such suits. If we were satisfied that such was the Judge's meaning, we think we might reasonably have held that he "had failed to exercise a jurisdiction vested in him by law," and might have interfered under s. 622 of the Civil Code Procedure. But we do not think the Judge means to hold that s. 32 is not capable of application to interpleader suits. What we think he has held, and held erroneously, is that no person should be added as a defendant to an interpleader suit unless the plaintiff recognizes some right in the party who seeks to be added to share in the thing in respect of which the interpleader suit is brought. This is not "failing to exercise a jurisdiction vested in him by law," but simply putting an erroneous construction upon the provisions of an Act. We are therefore constrained, reluctantly, to discharge the rule, but we shall do so without costs. Mr. O'Kinealy, in the course of his argument, urged that s. 32 of the Civil Procedure Code did not contemplate the addition of a party upon his or her own motion, and in support of his contention he cited *Badsha* v. *Nicol Fleming & Co.* (1), *Parshadi Lal* v. *Ramdial* (2) and *Biswas* v. *Biswas* (3). In the first case the plaintiffs had purchased a cargo of rice, by sample, from the defendants, who had purchased it, by sample, from one Pestonjee Eduljee; the defendants applied to have their vendor

(1) I. L. R., 4 Calc., 355. (2) I. L. R., 2 All., 744.
(3) I. L. R., 5 Calc., 882.

1886

RABBABA KHANUM v. NOORJEHAN BEGUM.

added as a defendant, alleging that the question between the plaintiffs and themselves was the same as between themselves and their vendor. Pontifex, J., refused the application upon the ground "that he could not say that, in the suit by the defendant against Nicol Fleming & Co., the plaintiff *ought* to have joined Pestonjee Eduljee as a defendant; nor could he say that the presence of Pestonjee Eduljee was *necessary* in order to enable the Court effectually and completely to adjudicate and settle the question involved in the suit between Badsha and Nicol Fleming and Co." The question whether Pestonjee Eduljee might have been added on his motion, though he was hardly likely to make such a motion, was not considered. The case of *Biswas* v. *Biswas* was a suit for the partition of joint family property, and the mortgagees of the right, title and interest of the plaintiff applied under s. 32 of the Civil Procedure Code to be added as parties. Wilson, J., refused the application upon the ground "that he did not consider their presence necessary to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit." No doubt the learned Judges are reported to have said "that s. 32 does not contemplate any application by the person proposed to be added." But we have the authority of the learned Judge to say that he did not mean to lay down as a matter of law that no party could be added to a suit upon his own application. In the case of the *Oriental Bank Corporation* v. *Charriol*, No 29 of 1882, Pigot, J., in an unreported judgment, delivered on 25th January 1886, deals exhaustively with this point (1). He says: "An objection was taken preliminary to the question as to the propriety of making the Banque parties; it was that s. 32 does not expressly provide that persons not parties to the suit may apply under the section, and a case of *Biswas* v. *Biswas* (2) was referred to; if that case laid down that such an application could not be entertained, I should of course follow it, but I do not understand that this is so, and I find that in *Vavasseur* v *Krupp* (3), Jessel, M. R., upon the application of the Mikado of Japan, made that sovereign a party defendant under the English

(1) See the case reported on appeal, I. L. R., 12 Calc., 642.

(2) I. L. R., 5 Calc., 882.

(3) L. R., 9 Ch. Div., 351.

rule corresponding to this section" (*i. e.* order XVI, rule 13) " and in *Khadarsaheb* v. *Chotibibi* (1), and *Vydianàdàyyan* v. *Sitaràmàyyan* (2) orders making persons defendants on their own application under s. 32 were affirmed. A similar order was made by Bayley, J., in *Ahmedbhoy Hubibhoy* v. *Vulleebhoy Cassumbhoy* (3), where that learned Judge refers to *Campbell* v. *Holyland* (4), where after decree in a foreclosure suit Jessel, M. R., made the purchasers after decree of the mortgagee's interest parties defendants upon their application, made *ex parte*; and also, upon the same application made a purchaser of the mortgagee's interest party defendant." We entirely agree with this judgment and have no hesitation in holding that a Court may, in the exercise of its discretion, add a party to a suit upon his own application.

K. M. C. *Rule discharged.*

Before Mr. Justice Mitter and Mr. Justice Grant.

HUKUM CHAND ASWAL (DECREE-HOLDER) *v.* GYANENDRA CHUNDER LAHIRI (MINOR) BY HIS GUARDIAN ABHAI CHUNDER BAGCHI (JUDGMENT-DEBTOR).*

1886 *April* 1.

Foreign Court, Decree of—Execution of decree—Jurisdiction—Court of Cooch Behar, Decree of.

The Courts of British India have no power to execute a decree passed by the Court of a Foreign State.

A decree of the Civil Court of Cooch Behar having been transferred for execution to the District of Rungpore: *held* that the Courts of Rungpore had no jurisdiction to execute the decree.

THIS was a proceeding in execution of a decree of the Civil Court of Cooch Behar. The decree-holder had applied for and obtained a certificate for the execution of the decree within the district of Rungpore. The certificate was sent to the Munsiff of Gaibanda, who dismissed the application on the ground that the decree was barred by time. The Subordinate Judge concurred in that order.

* Appeal from Appellate Order No. 442 of 1885, against the order of Baboo Hemango Chunder Bose, Rai Bahadur, Subordinate Judge of Rungpore, dated the 3rd of October 1885, affirming the order of Baboo Kristadhan Chowdhuri, Rai Bahadur, Munsiff of Gaibanda, dated the 3rd of August 1884.

(1) I. L. R., 8 Bom., 616.
(2) I. L. R., 5 Mad., 52.
(3) I. L. R., 8 Bom., 323.
(4) L. R., 7 Ch. Div., 166.